

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG LICHTENBERG

Appeal No. 1998-0649
Application No. 08/309,323

ON BRIEF

Before HAIRSTON, KRASS, and GROSS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 12, all of the claims pending in the application.

The invention pertains to a pressure relief system for a control system which houses electrical components.

Independent claim 1 is reproduced as follows:

1. A pressure relief system comprising a control system which includes a housing, a housing chamber located in said housing, and electrical equipment located in said housing chamber, and a valve system having a pressure relief device, wherein said housing chamber is connected via a connecting device to said pressure relief device.

The examiner relies on the following reference:

Ruchser et al. (Ruchser) 4,345,620 Aug.
24, 1982

Additionally, the examiner relies on admitted prior art [APA], related to an admission regarding gas dryers at page 5, lines 15-24 of the specification.

Claims 1 through 4 stand rejected under 35 U.S.C. 102(b) as anticipated by Ruchser. Claims 5 through 12 stand rejected under 35 U.S.C. 103 as unpatentable over Ruchser in view of APA.

Appeal No. 1998-0649
Application No. 08/309,323

Page 3

Reference is made to the briefs and answer for the
respective positions of appellant and the examiner.

OPINION

With regard to the anticipation rejection and particularly with regard to independent claim 1, the examiner identifies the following corresponding elements within Ruchser:

Viewing Figure 1 or 2 of Ruchser, the pressure relief system is identified as the entire Figure, safety valve assembly 10. The control system is identified as having a housing 12 and a housing chamber located within the housing, the housing chamber being identified by the examiner as the unlabeled chamber which holds electrical equipment, identified by the examiner as electrical switch 82. The claimed valve system is identified by the examiner as elements 16, 17, 26 and 28 of Ruchser and the pressure relief device is initially identified as consumer outlet 22 of Ruchser but the examiner later admits, agreeing with appellant, that return outlet 24 of Ruchser would correspond to appellant's claimed pressure relief device. Up to this point, there appears to be no problem with

the examiner's analysis of Ruchser and its application to the instant claimed invention.

However, claim 1 also requires that the "housing chamber is connected via a connecting device to said pressure relief device." The examiner contends that the housing chamber holding electrical component 82 is, indeed, connected via a connecting device, 64 and 44, to the pressure relief device.

For his part, appellant argues that the unlabeled chamber holding element 82 is not connected to the pressure relief device at all because while conduit 64 may lead to working chamber 72, this chamber is separated from the unlabeled chamber by stepped piston 76, as well as by sliding means 80. The examiner contends that the unlabeled chamber, together with working chambers 72 and 74 may be considered one housing chamber, with the pistons being part of the electrical equipment therein. While we would agree with appellant that it is not reasonable to consider pistons 76 and 78 as "electrical equipment," since they are clearly mechanical components, the pistons are merely other elements within the chamber which

includes electrical equipment. The claims do not preclude the chamber from including other elements in addition to the electrical equipment contained therein. Moreover, while appellant argues that the structural components depicted by Ruchser, i.e., pistons 76, 78 and sliding member 80, clearly divide the structure shown into three separate chambers and, therefore, the middle, unlabeled chamber, the one holding the electrical equipment, is not connected to the pressure relief device, we disagree with this assessment.

While Figures 1 and 2 of Ruchser show the safety valve assembly in an inoperative state and an operative state, respectively, wherein pistons 76 and 78 and sliding member 80 appear to be fixed, centrally located within a cavity and it would appear that the solid structure of the sliding member 80 divides this cavity into three separate and independent chambers, an analysis of Figure 3 indicates that this is not the case.

Ruchser's Figure 3 depicts the situation wherein there is a malfunction and valve seat 44 is closed while valve seat 45

remains open. Ruchser's invention is directed to dealing with this situation and it involves the use of the pistons 76 and 78 responding to unequal pressures. More specifically, as depicted in Ruchser's Figure 3, because of the location of pressures introduced by the malfunction, the full supply pressure is built up in the working chamber 72 via the supply inlet 20, annular passage 51, connecting passage 54, annular passage 60 and conduit 64. Meanwhile, working chamber 74 is vented via the conduit 66, open valve seat 45 and the open valve seat of working piston 16, to the return outlet, i.e., pressure relief device, 24. See column 5, lines 1-16 of Ruchser. Thus, the operation of the Ruchser device in the event of a malfunction makes it clear that the pistons 76 and 78 and the sliding member 80 are in a slidable relationship with each other and all move within the same cavity.

Accordingly, we agree with the examiner's assessment that the cavity in Ruchser, which holds pistons 76 and 78, sliding member 80 and the electrical equipment, may reasonably be considered to be a single "housing chamber," as claimed. This being the case, and that housing chamber being vented to pressure relief device 24, via the conduit 66, open valve seat

45 and the open valve seat of working piston 16, we agree with the examiner that Ruchser anticipates the instant claimed invention, as set forth in claim 1.

While appellant appears to indicate, at page 4 of the principal brief, that the claims do *not* stand or fall together, appellant presents no separate arguments regarding claims 2 through 4. Therefore, claims 2 through 4 will fall with independent claim 1.

Accordingly, we will sustain the rejection of claims 1 through 4 under 35 U.S.C. 102(b).

Turning to the rejection of claims 5 through 12 based on 35 U.S.C. 103, the examiner recognizes that Ruchser discloses nothing about a gas drying system and turns to appellant's specification, page 5, lines 15-24, for a teaching of employing a gas dryer since, the examiner alleges, appellant "states that the gas dryer required for the disclosed system may be selected from any known and available design including the chemical drying" [answer-page 5]. The examiner then concludes that it

would have been obvious "to select one of the commonly used air or gas dryers to remove moisture introduced to the control device by the outside air or gas if the controlled process has to use a pressure sensor that must be protected from the outside contamination" [answer-page 5].

We will not sustain the rejection of claims 5 through 12 under 35 U.S.C. 103 based on Ruchser in view of so-called "applicant's own admission." The portion of the specification referred to by the examiner, page 5, lines 15-24, does not describe prior art. This portion is not in the background portion of the specification but, rather, it appears under the heading of "Detailed Description of the Invention." Moreover, the mere fact that gas drying devices, per se, were known and that they "may be designed in any known manner" [specification-page 5], does not lead, necessarily, to the conclusion that it would have been obvious to employ such well known devices in the specific manner claimed by appellant, e.g., "installed in said connecting device," as recited by dependent claim 5. Why, within the meaning of 35 U.S.C. 103, would the skilled artisan have found it obvious to install a gas drying system in the

connecting device, i.e., somewhere within conduit 66, open valve seat 45 and the open valve seat of working piston 16, of Ruchser without some specific suggestion to do so?

While it might very well have been obvious to install a gas drying device, and/or one which operates on a chemical principle, in the connecting device of Ruchser, we simply have no evidence before us, other than appellant's own disclosure, that would suggest doing so. Accordingly, we must reverse the rejection of claims 5 through 12 under 35 U.S.C. 103 based on the evidence before us.

The rejection of claims 1 through 4 under 35 U.S.C. 102(b) is sustained. The rejection of claims 5 through 12 under 35 U.S.C. 103 is reversed. Accordingly, the examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED-IN-PART

KENNETH W. HAIRSTON)	
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)	BOARD OF PATENT
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Appeal No. 1998-0649
Application No. 08/309,323

Page 12

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